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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

NO. 661

THE FORTY-FOURTH GENERAL ASSEMBLY OF THE STATE OF COLORADO, JOHN LOVE, as Governor of the State of Colorado, HOMER BEDFORD, as Treasurer of the State of Colorado, BYRON ANDERSON, as Secretary of State of the State of Colorado, EDWIN C. JOHNSON, JOSEPH F. LITTLE and WILBUR M. ALTER,

Appellants,

VS.

ANDRES LUCAS and ARCHIE L. LISCO, individually and as citizens of the State of Colorado, taxpayers and electors therein, for themselves and for all other persons similarly situated,

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

JURISDICTIONAL STATEMENT

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Appellants,

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Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

JURISDICTIONAL STATEMENT

1(a) Appellants appeal from the judgment of the United States District Court for the District of Colorado, entered on July 13, 1964. This judgment was entered on remand from the judgment of the Supreme Court of the United States holding that an amendment to the Constitution of the State of Colorado was repugnant to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, in *Lucas v. Forty-Fourth General Assembly of Colorado*, No. 508, October Term, 1963,

377 U.S. 713, 84 S.Ct. 1472. The District Court held that the invalid portions of the amendment were not severable from the remaining portions of the amendment, and that the amendment failed *in toto*. Appellants submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The United States District Court for the District of Colorado did not render an opinion on remand from this Court. The judgment entered by the District Court on July 13, 1964, is attached hereto as Appendix A.

JURISDICTION

1(b) The grounds upon which jurisdiction of this Court is invoked are:

(i) This is an appeal from a final judgment of the three-judge District Court on remand from the United States Supreme Court, wherein the District Court, by a 2 to 1 decision, invalidated every section of an initiated Colorado Constitutional Amendment, effectively granting, *in toto*, a request for injunctive relief from the application of the amendment to the Colorado Constitution. The suit was originally brought by appellees under 28 U.S.C. Sec. 1343 and 42 U.S.C. Sec. 1983. The appeal is taken pursuant to 28 U.S.C. Sec. 1253.

(ii) The date of the decree sought to be reviewed is July 13, 1964. The notice of appeal was filed in the United States District Court for the District of Colorado on September 11, 1964, pursuant to 28 U.S.C. § 2101(b).

(iii) It is believed that Section 1253 of Title 28 United States Code confers jurisdiction of this appeal.

(iv) Cases believed to sustain the jurisdiction of this Court include the following:

Lucas v. Forty-Fourth General Assembly of Colorado, probable jurisdiction noted 375 U.S. 938, 84 S.Ct. 351, 11 L.Ed. 2d 270. Decided June 15, 1964, 377 U.S. 713, 84 S.Ct. 1472.

The mandate of the Supreme Court in this case remanded the case "for further proceedings consistent with the views stated here . . . " (377 U.S. 713, 739). Of necessity the lower court was faced with the question of severability of Amendment 7 in determining what remedies were appropriate.

Guinn v United States
238 U.S. 347, 35 S.Ct. 926, 59 L.Ed. 1340 (1915).

Myers v. Anderson
238 U.S. 368, 35 S.Ct. 932, 59 L.Ed. 1349 (1915).

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Florida Lime and Avocado Growers, Inc. v. Jacobsen
362 U.S. 73, 80 S.Ct. 568, 4 L.Ed. 2d. 568 (1960).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

(v) This case involves the severability of an amendment to the Colorado Constitution, commonly referred to as Amendment No. 7, placed by initiative on

the ballot of the election of November 6, 1962, adopted by the people of Colorado at that election. The substantive portions of Amendment No. 7 are set forth in Colo. Sess. Laws, 1963, Ch. 312, p. 1045 et seq., as follows:

"AN ACT

TO AMEND ARTICLE V OF THE STATE CONSTITUTION PROVIDING FOR THE APPORTIONMENT OF THE SENATE AND HOUSE OF REPRESENTATIVES OF THE GENERAL ASSEMBLY AND PROVIDING FOR SENATORIAL DISTRICTS AND REPRESENTATIVE DISTRICTS.

Be It Enacted by the People of the State of Colorado:

"Section 1. Sections 45, 46, and 47 of Article V of the Constitution of the State of Colorado are hereby repealed and new Sections 45, 46, 47 and 48 of Article V are adopted, to read as follows:

"Section 45.—*General Assembly.*—The general assembly shall consist of 39 members of the senate and 65 members of the house, one to be elected from each senatorial and representative district. Districts of the same house shall not overlap. All districts shall be as compact as may be and shall consist of contiguous whole general election precincts. No part of one county shall be added to another county or part of another county in forming a district. When a district includes two or more counties they shall be contiguous.

"Section 46.—*House of Representatives.*—The state shall be divided into 65 representative districts which shall be as nearly equal in population as may be.

"Section 47.—*Senate.*—The state shall be divided into 39 senatorial districts. The apportionment of senators among the counties shall be the same as now provided by 63-1-3 of Colorado Revised Statutes 1953, which shall not be repealed or amended other than in numbering districts, except that the counties of Chey-

enne, Elbert, Kiowa, Kit Carson and Lincoln shall form one district, and one additional senator is hereby apportioned to each of the counties of Adams, Arapahoe, Boulder and Jefferson. Within a county to which there is apportioned more than one senator, senatorial districts shall be as nearly equal in population as may be.

"Section 48.—*Revision of Districts.*—At the regular session of the general assembly of 1963 and each regular session next following official publication of each Federal enumeration of the population of the state, the general assembly shall immediately alter and amend the boundaries of all representative districts and of those senatorial districts within any county to which there is apportioned more than one senator to conform to the requirements of Sections 45, 46 and 47 of this Article V. After 45 days from the beginning of each such regular session, no member of the general assembly shall be entitled to or earn any compensation or receive any payments on account of salary or expenses, and the members of any general assembly shall be ineligible for election to succeed themselves in office, until such revisions have been made. Until the completion of the terms of the representatives elected at the general election held in November of 1962 shall have expired, the apportionment of senators and representatives and the senatorial and representative districts of the general assembly shall be as provided by law. . . . "

QUESTION PRESENTED

1(c) The specific question presented is whether Section 45 and related portions of Section 48, above set forth, may be allowed to stand, after deleting Sections 46 and 47, with the result that:

(i) Colorado will not be required to conduct a state census in the fifth year of each decade, as previously required.

(ii) The size of the Colorado senate will be increased from 35 to 39.

(iii) Members of both the house and senate will be elected from single member districts.

(iv) The initial responsibility for revision of districts shall remain with the legislative branch, with severe penalties on its members for failure to perform their duties.

(v) The revision of districts will be made after each decennial Federal census in accordance with the rulings of the United States Supreme Court.

The question may be further expressed as follows:

(i) Whether those provisions of Article V of the Constitution of the State of Colorado held to be repugnant to the equal protection clause of the Fourteenth Amendment of the United States Constitution by the Supreme Court of the United States on June 15, 1964, in *Lucas v. Forty-Fourth General Assembly of Colorado*, No. 508, October Term, 1963, 377 U.S. 713, 84 S.Ct. 1472, are severable from those provisions of said Article V which were not challenged by any party to this action and which were not held invalid by the Supreme Court.

(ii) Whether the Federal Court should invalidate portions of the State constitutional amendment adopted by the people of the State pursuant to initiative provisions of the State Constitution unless those portions are clearly incomplete and incapable of standing alone, upon deletion of the portions offending the United States Constitution.

STATEMENT

A. Since this appeal stems directly from and is a continuation of a phase of the same case, appellants respectfully request that the exhibits, briefs and appendices thereto filed in *Lucas v. Forty-Fourth General*

Assembly of Colorado, No. 508, October Term, 1963, 377 U.S. 713, 84 S.Ct. 1472, be considered before the Court on this appeal.

Appellees, plaintiffs below, instituted this action attacking the validity of the *apportionment* of the Colorado legislature as it existed in 1962, prior to the adoption of Amendment No. 7. *Lisco v. McNichols*, 208 F. Supp. 471 (D. Colo. 1962). The Colorado Constitution formerly provided for a state census in the fifth year of each decade, for reapportionment after each Federal and state census, for a house of up to 65 members and a senate of up to 35 members and for permissive rearrangement of districts. (1935 Colorado Statutes Annotated, Vol. 5, Colorado Constitution, Article V, Sections 45, 46 and 47.) Subdistricting of multi-member counties was prohibited. No penalties for failure of the legislature to act where provided.

After the adoption of Amendment No. 7 in the November General Election of 1962, the pleadings were amended and the case tried on the plaintiffs' theory that the *apportionment of the senate* as above set forth in Section 47 was invidiously discriminatory in violation of the Fourteenth Amendment of the Constitution of the United States. The District Court, by a 2 to 1 decision, disagreed. *Lisco v. Love*, 219 F. Supp. 922 (D. Colo. 1963).

Plaintiffs, appellees here, appealed. This Court noted probable jurisdiction on December 9, 1963, overruling motions to dismiss or affirm. 375 U.S. 938, 84 S.Ct. 351, 11 L.Ed. 2d 270. This Court then dispensed with the printing of the record, 375 U.S. 961, 84 S.Ct. 481, but requested that certain exhibits be included with the briefs of the parties. The defendants and intervenors thereupon printed substantially all of the record as an appendix to their briefs and separately submitted certain exhibits prior to oral argument.

On June 15, 1964, in *Lucas v. Forty-Fourth General Assembly of Colorado*, No. 508, October Term, 1963, 377 U.S. 713, 84 S.Ct. 1472, this Court reversed the judgment of the District Court by a vote of 6 to 3, and remanded the case for further proceedings consistent with the majority opinion. The majority opinion stated:

> ". . . the apportionment of Senate seats, under Amendment No. 7, clearly involves departures from population-based representation too extreme to be constitutionally permissible, and there is no indication that the apportionment of the two houses of the Colorado General Assembly, pursuant to the 1962 constitutional amendment, is severable. We therefore conclude that the District Court erred in holding the legislative apportionment plan embodied in Amendment No. 7 to be constitutionally valid." 377 U.S. 713, 734-35.

This Court did not discuss either the validity of severability of those provisions of Amendment No. 7 which provided for the division of counties electing more than one senator or representative into single-member districts, or of the other provisions of the enactment, as these questions had not been decided by the District Court, and were not briefed or argued to this Court.

B. Upon the announcement by the United States Supreme Court of its decision on June 15, 1964, in the *Lucas* case, all parties thereto stipulated pursuant to Rule 59 of the Rules of the Supreme Court that the mandate of the Court issue forthwith. Thereafter, on the 26th day of June, 1964, the three-judge District Court reconvened and held argument on various questions presented under the mandate. It issued a ruling on that date that Amendment No. 7 was not severable, and failed *in toto*. A full transcript of the ruling is attached hereto as Appendix B.

Promptly thereafter the Colorado legislature convened in special session and adopted Senate Bill No. 1, Forty-Fourth General Assembly, Second Special Session, 1964. Thereafter and on July 8, 1964, the three-judge District Court for the District of Colorado reconvened to consider the provisions of Senate Bill No. 1 and issued a further ruling that the plan of apportionment embodied in Senate Bill No. 1 comported with the requirements of the Equal Protection Clause. A copy of the transcript of this ruling is appended hereto as Appendix C.

Thereafter, pursuant to the direction of the court below in its said ruling, final judgment was prepared and entered on July 13, 1964 (Appendix A).

C. In the meantime, by reason of the ruling of the court below that Amendment No. 7 was not severable (Appendices A, B and C), the controversy as to whether or not single-member districts could be established under the Colorado Constitution as it existed prior to Amendment No. 7, was litigated in the Colorado Supreme Court. The Colorado Supreme Court had previously declined to decide the merits of the validity of Amendment No. 7. *In re Legislative Apportionment*, 150 Colo. 380, 374 P. 2d 66 (1962). However, in *White v. Anderson*, July 17, 1964, 394 P. 2d 333, the Colorado Supreme Court issued an opinion that subdistricting within counties was not permissible under the former provisions of the Colorado Constitution. This question is not involved in this appeal.

THE QUESTIONS ARE SUBSTANTIAL

1(d) The questions presented are so substantial as to require briefs on the merits and plenary consideration, because:

This appeal involves the obligation of a federal court

to follow local law with respect to the severability of invalid portions of a State Constitution. Once a federal three-judge district court has properly taken jurisdiction of a case, it has jurisdiction over all the issues in the case, local as well as federal. *Florida Lime and Avocado Growers, Inc. v. Jacobsen*, 362 U.S. 73, 80-81, 80 S.Ct. 568, 4 L.Ed. 2d 568 (1960); *Louisville and N.R. Co. v. Garrett*, 231 U.S. 298, 303-04, 34 S.Ct. 48, 58 L.Ed. 229 (1913).

Here the District Court was required to decide the question of severability of a State constitutional amendment. The question of such severability is a question of State law. *Morey v. Doud*, 354 U.S. 457, 470, n. 16, 77 S.Ct. 1344, 1 L.Ed. 2d 1485 (1957).

On questions of the interpretation and application of State laws and State constitutional provisions, federal courts are bound by the decisions of the highest courts of the several States, and must follow State law. *Guinn v. United States*, 238 U.S. 347, 366, 35 S.Ct. 926, 59 L.Ed. 1340 (1915); *Myers v. Anderson*, 238 U.S. 368, 380-381, 35 S.Ct. 932, 59 L.Ed. 1349 (1915); and *Chas. Wolff Packing Co. v. Court of Industrial Relations*, 267 U.S. 552, 562, 45 S.Ct. 441, 69 L.Ed. 785 (1925).

Involved is the fundamental question of the role of the Federal courts in State apportionment cases and the preservation of the manifest will of the people of the sovereign State of Colorado insofar as it is possible to do so, within the limits of the proscriptions of the Fourteenth Amendment to the Constitution of the United States. In *Myers v. Anderson*, *supra*, 238 U.S. 368, 381, this Court said, with regard to a similar situation involving the construction of state election laws:

> "... that albeit the decision of the question was, in the very nature of things, a state one, nevertheless, in the absence of controlling state rulings, it was our duty to pass upon the subject, and that in doing so the overthrow of an illegal standard would not give rise to the

destruction of a legal one unless such result was compelled by one or both of the following conditions: (a) Where the provision as a whole plainly and expressly established the dependency of the one standard upon the other, and therefore rendered it necessary to conclude that both must disappear as the result of the destruction of either; and (b) where, even although there was no express ground for reaching the conclusion just stated, nevertheless that view might result from an overwhelming implication consequent upon the condition which would be created by holding that the disappearance of the one did not prevent the survival of the other; that is, a condition which would be so unusual, so extreme, so incongruous as to leave no possible ground for the conclusion that the death of the one had not also carried with it the cessation of the life of the other."

The District Court failed to apply the doctrine of severability, as interpreted and applied by the Colorado Supreme Court, to the present case. "The rule as to the divisibility of a constitutional provision, a portion of which is held void, is the same as that applied to a statute under similar conditions". *People v. Max*, 70 Colo. 100, 104, 198 Pac. 150 (1921).

The policy of Colorado law as to statutes is in favor of severability. Colo. Rev. Stat. 1953, Section 135-1-5, provides as follows:

"*Severability of statutes.*—If any provision of a statute is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of the statute are valid, unless it appears to the court that the valid provisions of the statute are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one; or unless the court determines that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent."

A presumption of severability is applied by the Colorado Supreme Court to the construction of legislation which has been held unconstitutional in some particular:

> "It is an elementary rule of decision that 'if, when the unconstitutional portion (of a legislative act) is stricken out, that which remains is complete in itself, and capable of being executed in accordance with the apparent legislative intent wholly independent of that which was rejected, it *must* be sustained.' [emphasis added] *Newman v. People*, 23 Colo. 300, 309, 47 Pac. 278; *Frost v. Pfeiffer*, 26 Colo. 338, 343, 58 Pac. 147." *In Re Questions of the Governor*, 55 Colo. 17, 21-22, 123 Pac. 660 (1912); *Home Owners' Loan Corp. v. Public Water Works Dist. No. 2*, 104 Colo. 466, 469, 92 P. 2d 745 (1939).

This rule has been consistently applied in Colorado, even in the absence of a "severability" clause in the statute. A severability clause attached to a statute in Colorado is regarded by the Colorado Supreme Court as an *additional* reason for applying a presumption of severability, not as the *only* reason. See *In Re Questions of the Governor*, *supra*, 55 Colo. 17, 21-22; and see *Greeley Transp. Co. v. People*, 79 Colo. 307, 312-313, 245 Pac. 720 (1926). In *Smith Bros. Cleaners & Dyers, Inc. v. People ex rel. Rogers*, 108 Colo. 449, 459, 119 P. 2d 623 (1941), the Colorado Supreme Court said that a severability clause in a statute ". . . should at least be considered as an aid in determining legislative intent." And in *Home Owners' Loan Corp. v. Public Water Works Dist. No. 2*, *supra*, the Court declared that ". . . the omission by the Fifteenth General Assembly of the clause as to validity of different parts of this particular act is immaterial.", 104 Colo. 466, 469, and held the valid portions of the act in question severable.

Another cardinal rule of construction in Colorado is sometimes stated in the following manner:

> "If the invalid portion of an act was apparently an inducement to the passage of the valid, the statute

is not severable." *Denver v. Lynch*, 92 Colo. 102, 108, 18 P. 2d 907, 86 A.L.R. 907 (1932).

This language is a bit misleading because it indicates a concern with the subjective motives of the authors of the law in question, when in fact the Colorado Supreme Court has not gone beyond an examination of the act itself and the history of prior acts to determine whether the valid portions are so connnected with and dependent upon the invalid portions as to prevent the act from making sense if severed. Thus a more accurate statement of the rule in Colorado is that given by Chief Justice Elbert in *People ex rel. Tucker v. Rucker*, 5 Colo. 455, 465-66 (1880):

> " 'Where a part of a statute is unconstitutional, the fact does not authorize the courts to declare the remainder void also, unless all the provisions are connected in subject matter, depending on each other, operating together for the same purpose, or otherwise so connected together in meaning, that it cannot be presumed the legislature would have passed the one without the other. The constitutional and unconstitutional provisions may even be contained in the same section, and yet be perfectly distinct and separate, so that the first may stand though the last fall. The point is not, whether they are contained in the same section, for the distributions into sections is purely artificial, but whether they are essentially and inseparably connected in substance. If when the unconstitutional portion is stricken out, that which remains is complete in itself, and capable of being enforced in accordance with the apparent legislative intent, wholly independent of that which is rejected, it will be sustained.' Cooley's Con. Lim. 178."

Thus the final standard to be applied in Colorado is a somewhat mechanical one, which tests the completeness of the act without the invalid portion, and ascertains that the result is not contrary to the obvious intent of the legislature. See *Sipe v. People ex rel. Milliken*, 26 Colo. 127, 56 Pac. 571 (1899); and see *Smith Bros. Cleaners & Dyers, Inc. v. People ex rel. Rogers*, 108 Colo. 449, 119 P. 2d 623 (1941).

However, even if the subjective motives of the electorate of Colorado be deemed material, all of the evidence in this case would indicate that it was the intent that subdistricting of multi-member counties, the elimination of a state census, and providing enforcement of the redistricting requirements of law were major, independent elements of Amendment No. 7. Specifically as to subdistricting, in recent Colorado history three measures, in addition to Amendment No. 7, relating to reapportionment have been considered and rejected by the people. None of them required subdistricting, while the one rejected in 1954 was very similar to Amendment No. 7 in other respects. *Lisco v. Love*, 219 F. Supp. 922, 931, n. 32; *Lucas v. Forty-Fourth General Assembly of Colorado, supra*, 377 U.S. 713, 727, n. 13. Since subdistricting assures representation of minority groups within large counties, it can fairly be argued that the people of Colorado have expressed an intent that any reapportionment result shall guarantee not only that the majority shall rule but that the minorities shall be protected.

Where the Colorado Supreme Court has struck down an entire act because part of it was found invalid, it has either been because the remainder of the act was so emasculated and incomplete that no legislature could have wished it to stand alone, or because eliminating the invalid part of the act would have given the remainder an ultimate effect quite different from that achieved by the whole act. In *White v. Anderson*, 394 P. 2d. 333 (Colo. 1964), it was held that Senate Bill No. 1, as approved by the District Court, was invalid in its entirety when the provisions for the division of counties into several senatorial and representative districts fell, because the act then contained no provisions whatsoever for representation of Denver and certain other counties, and was incomplete.

Examples of acts where their meaning and effect are drastically changed by the elimination of the invalid portions are found in *Gordon v. Wheatridge Water District*,

107 Colo. 128, 109 P. 2d 899 (1941); *Denver v. Lynch*, 92 Colo. 102, 18 P. 2d 907, 86 A.L.R. 907 (1932); *Leddy v. People ex rel. Attorney General*, 59 Colo. 120, 147 Pac. 365 (1915); *People v. Morgan*, 76 Colo. 504, 246 Pac. 1024 (1926); and *Four-County Metropolitan Capital Improvement Dist. v. Board of County Comm'rs. of Adams County*, 149 Colo. 284, 369 P. 2d 67 (1962).

In this case all of the rules of severability, as well established in Colorado, are satisfied, in that Section 45 of Amendment No. 7, establishing the number of members in the house and senate and providing for single-member districts, and the enforcement provisions of Section 48 are complete in themselves, capable of being executed in accordance with the intent of the people, and wholly independent of the invalid apportionment provisions of Sections 46 and 47. Indeed, Sections 46 and 47 are surplusage, supplanted by the decisions in *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362 (1964), and *Lucas, supra;* it is a well established rule in Colorado that an act will be held to be severable where the missing portion can be supplied by an existing rule of law, statute or constitutional provision. See *Coulter v. Board of County Comm'rs. of Routt County*, 9 Colo. 258, 11 Pac. 199 (1886); *Tripp v. Overocker*, 7 Colo. 72, 1 Pac. 695 (1883); *People ex rel. Tucker v. Rucker*, 5 Colo. 455 (1880); *Frost v. Pfeiffer*, 26 Colo. 338, 58 Pac. 147 (1899); *Greeley Transp. Co. v. People*, 79 Colo. 307, 245 Pac. 720 (1926); *Fleming v. McFerson*, 94 Colo. 1, 28 P. 2d 1013 (1934).

What this Court held invalid in *Lucas v. Forty-Fourth General Assembly of Colorado*, 377 U.S. 713, 84 S.Ct. 1472, was ". . . the legislative apportionment plan embodied in Amendment No. 7 . . . . " 377 U.S. 713, 735. Under the presumption of constitutionality accorded legislative enactments, which is " . . . undoubtedly stronger when the law is a constitutional amendment adopted by vote of the people." (District Judge Doyle, dissenting in *Lisco v. Love*,

219 F. Supp. 922, 943 (1963)) no more than necessary should be held invalid.

The importance of this case is not only that the District Court has erred in determining severability, but that it has so clearly failed to apply the established Colorado doctrines of severability to Amendment No. 7. Were this case on appeal from a Court of Appeals, this failure could well constitute a ground for the granting of certiorari under Rule 19 of the Rules of this Court. The Congressional policy has been stated since 1789 in the Rules of Decision Act, 28 U.S.C. § 1652, and as in *Morey v. Doud*, 354 U.S. 457, 77 S.Ct. 1344, 1 L.Ed. 2d 1485 (1957), this Court has taken care to see that Federal Courts gave due respect to local rules of law. Relations between the District Court and the Colorado Supreme Court have already been strained by this case, as the opinions in *White v. Anderson*, 394 P. 2d 333 (Colo. 1964) disclose.

It is respectfully submitted, therefore, that the United States Supreme Court has jurisdiction of this appeal and that the questions presented are substantial and urgent and should be heard by the Supreme Court.

Respectfully submitted,

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Actions Number 7501 and
7637, consolidated

ANDRES LUCAS and ARCHIE LISCO, individually and as citizens of the State of Colorado, taxpayers, and electors therein, for themselves and for all other persons similarly situated,

Appellants,

vs.

THE FORTY-FOURTH GENERAL ASSEMBLY OF THE STATE OF COLORADO, JOHN LOVE, AS GOVERNOR OF THE STATE OF COLORADO, HOMER BEDFORD, AS TREASURER OF THE STATE OF COLORADO, AND BYRON ANDERSON, AS SECRETARY OF STATE OF THE STATE OF COLORADO,

Appellees.

ORDER, JUDGMENT, AND DECREE.

The within and above captioned matter having come on to be heard before this Court, before Hon. Jean S. Breitenstein, Circuit Judge, United States Court of Appeals, Presiding, and Hon. Alfred A. Arraj, Chief Judge, United States District Court for the District Court of Colorado, and Hon. William R. Doyle, Judge, United States District Court for the District of Colorado, on the 8th day of July, 1964, and the parties and intervenors herein appearing by their several counsel of record and being fully represented, and the Amicus Curiae appearing personally herein;

and all parties being properly before this Court; and the Court having examined the records in this proceeding and having heard statements of counsel and of the amicus curiae, and being fully advised in the premises; and the Court having made findings from the bench and having ordered the preparation of this Order, Judgment, and Decree, NOW, THEREFORE, The Court doth find as follows:

1. That an appeal has heretofore been taken in this matter to the Supreme Court of the United States, as ANDRES LUCAS, et al., etc., v. THE FORTY-FOURTH GENERAL ASSEMBLY OF THE STATE OF COLORADO, et al., being No. 508, October Term, 1963.

2. That the Supreme Court of the United States has on June 15, 1964, delivered an opinion in the said action, wherein it is stated as follows:

> "Since the apportionment of seats in the Colorado Legislature, under the provisions of Amendment No. 7, fails to comport with the requirements of the Equal Protection Clause, the decision below must be reversed. Beyond what we said in our opinion in *Reynolds*, we express no view on questions relating to remedies at the present time. On remand, the District Court must now determine whether the imminence of the 1964 primary and general elections requires that utilization of the apportionment scheme contained in the constitutional amendment be permitted, for purposes of those elections, or whether the circumstances in Colorado are such that appellants' right to cast adequately weighted votes for members of the State Legislature can practicably be effectuated in 1964: Accordingly, we reverse the decision of the court below and remand the case for further proceedings consistent with the views here and in our opinion in *Reynolds v. Sims*."

3. That in pursuance of the said Opinion, judgment of the Supreme Court of the United States has entered, and has been transmitted to this Court, it being thereby specifically ordered and adjudged by the Supreme Court of the United States that the Judgment of the United States District Court be reversed with costs, and the cause be and is remanded to the United States District Court for the District of Colorado for further proceedings in conformity with the opinion of the Supreme Court of the United States.

4. That this Court pursuant to the said judgment has jurisdiction of this action.

5. That, following the transmittal of the said judgment to this Court, and in pursuance of the judgment and mandate of the Supreme Court of the United States, hearing was had before this Court on the 26th day of June, 1964, at Denver, Colorado, all of the parties hereto and the intervenors herein and the amicus curiae herein being represented by counsel and personally, respectively, and being heard.

6. That, at the hearings held on June 26, 1964, the Court announced the ruling that on the question of the severability of Amendment Number 7, Judge Doyle and Judge Breitenstein felt that Amendment Number 7 was not severable and hence failed in toto. Judge Arraj dissented from that ruling. At the same hearing, on the question whether or not Section 47 of Article V of the Colorado Constitution prohibited subdistricting, Judge Arraj and Judge Breitenstein concluded that it did not, and Judge Doyle disagreed with that decision. This Court unanimously found and determined that the imminence of the 1964 elections did not require the utilization of the apportionment scheme contained in the invalidated Amendment No. 7, and that the time available was sufficient for the State of Colorado to take action which would effectuate the de-

cision of the Supreme Court of the United States, and the Court accordingly ordered that the matter be set over to 9:30 o'clock, A. M., July 15, 1964, for advice as to whether State action would be taken, holding that absent such action, this Court would carry out the duty which it has under the judgment and mandate of the Supreme Court of the United States and provide a method for election of the Colorado legislature in 1964.

7. That, following the hearings in this Court on June 26, 1964, the Governor of the State of Colorado called a Special Session of the General Assembly of the State of Colorado, and that Special Session of the General Assembly of the State of Colorado duly convened.

8. That this Court was advised heretofore that the General Assembly of Colorado had passed Senate Bill Number 1, the terms of which are hereinafter set forth as a part of this Order, Judgment, and Decree, and appear herein below, and that the said bill had been presented to the Governor for signature, with an indication that the Governor intended to sign the said bill.

9. That the attorneys for the Plaintiffs, the Defendants, and the Intervenors appear to agree that for purposes of the 1964 election, the apportionment and establishment of senatorial and representative districts for the General Assembly of Colorado made in said Senate Bill No. 1 comports with the requirements of the Fourteenth Amendment to the Constitution of the United States and the opinion, judgment, and mandate of the Supreme Court of the United States in the aforementioned LUCAS et al. vs. 44th GENERAL ASSEMBLY, et al., and the Court has examined the said Senate Bill No. 1 and finds that for the purposes of the 1964 elections the apportionment and establishment of senatorial and representative districts for the General Assembly of Colorado made in the said Senate Bill No. 1 does comport with the requirements of the Four-

teenth Amendment to the Constitution of the United States and the opinion, judgment, and mandate of the Supreme Court of the United States as aforesaid.

WHEREFORE, IN THE CONTEXT OF THE ABOVE FINDINGS, and of the case as it now stands, it is the opinion of this Court that for the purposes of the 1964 elections the apportionment made in the said Senate Bill Number 1, as set out hereinbelow, does not offend the Fourteenth Amendment to the Constitution of the United States and is adequate to comply with the mandate of the Supreme Court of the United States.

WHEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. That the 1964 primary and general elections for the General Assembly of the State of Colorado shall be conducted in the manner prescribed and in conformity with the aforesaid Senate Bill number 1, and in accordance with the apportionment, and establishment of senatorial and representative districts made therein, as follows, towit:

AN ACT

(Senate Bill No. 1. By Senators Rogers, Wenke, and Gill; also Representatives Mackie, Stevens, Myrick, Schieffelin, Stockton, and Griffith.)

CONCERNING THE GENERAL ASSEMBLY, PROVIDING FOR THE APPORTIONMENT OF THE MEMBERS THEREOF, AND ESTABLISHING SENATORIAL AND REPRESENTATIVE DISTRICTS.

Be It Enacted by the General Assembly of the State of Colorado:

Section 1.—*Number of members of general assembly —election from districts.*—The senate of the general assembly of the state of Colorado shall consist of thirty-five members and the house of representatives thereof shall consist of sixty-five members, with one member of the senate to be elected from each senatorial district and one mem-

ber of the house of representatives to be elected from each representative district, as hereinafter established.

Section 2.—*Senatorial districts — number — composition.*—(1) *Districts 1-9—city and county of Denver.*—There shall be nine senatorial districts within the city and county of Denver which shall be numbered as follows and shall consist of the following whole general election precincts:

District 1: Precincts 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, and 624.

District 2: Precincts 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1523, 1524, and 1525.

District 3: Precincts 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1616, 1617, 1618, 1619, 1620, 1621, 1622, 1623, 1624, 1625, 1626, 1801, 1802, 1803, 1804, 1805, 1806, 1807, 1808, 1809, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1817, 1818, 1819, 1820, 1821, 1822, 1823, 1824, 1825, and 1826.

District 4: Precincts 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, and 725.

District 5: Precincts 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035,

1701, 1702, 1703, 1704, 1705, 1706, 1707, 1708, 1709, 1710, 1711, 1712, 1713, 1714, 1715, 1716, 1717, 1718, 1719, 1720, 1721, 1722, 1723, 1724, 1725, 1726, and 1727.

District 6: Precincts 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, and 418.

District 7: Precincts 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, and 1232.

District 8: Precincts 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, and 825.

District 9: Precincts 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, and 1426.

(2) *Districts 10-12—El Paso county.* There shall be three senatorial districts within the county of El Paso which shall be numbered as follows and shall consist of the following whole general election precincts:

District 10: Precincts 19, 20, 21, 22, 31, 32, 33, 37, 38, 39, 40, 41, 42, 48, 49, 50, 51, 52, 53, 54, 56, 64, 65, 66, 67, 68, 69, and 70.

District 11: Precincts 16, 17, 18, 23, 24, 25, 26, 27, 28, 29, 30, 34, 35, 36, 57, 58, 59, 60, 61, 62, 63, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, and 92.

District 12: Precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 43, 44, 45, 46, 47, 55, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 93, 94, and 95.

(3) *Districts 13-15—Jefferson county.* (a) For the forty-fifth general assembly only, there shall be two senatorial districts within the county of Jefferson which shall be numbered as follows and shall consist of the following whole general election precincts:

District 13: Precincts 104, 106, 110, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 402, 405, 406, 408, 410, 411, and 412.

District 14: Precincts 101, 102, 103, 105, 107, 108, 109, 401, 403, 404, 407, 409, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 701, 702, 703, 704, 705, 706, 707, and 708.

(b) For the forty-sixth and subsequent general assemblies, there shall be three senatorial districts within the county of Jefferson which shall be numbered as follows and shall consist of the following whole general election precincts:

District 13: Precincts 101, 102, 103, 104, 105, 107, 108, 109, 110, 301, 303, 309, 311, 313, 314, 316, 319, 402, 403, 405, 406, 407, 408, 409, 410, 411, 412 and 503.

District 14: Precincts 401, 404, 501, 502, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 701, 702, 703, 704, 705, 706, 707, and 708.

District 15: Precincts 106, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 302, 304, 305, 306, 307, 308, 310, 312, 315, 317, and 318.

(4) *Districts 16 and 17—Pueblo county.* There shall be two senatorial districts within the county of Pueblo which shall be numbered as follows and shall consist of the following whole general election precincts:

District 16: Precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 41, 42, 43, 57, 58, 103, 105, 107, 116, and 117.

District 17: Precincts 34, 35, 37, 38, 39, 40, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 106, 108, 109, 110, 111, and 112.

(5) *Districts 18 and 19—Adams county.* There shall be two senatorial districts within the county of Adams which shall be numbered as follows and shall consist of the following whole general election precincts:

District 18: Precincts 101, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, and 310.

District 19: Precincts 100, 102, 103, 104, 105, 106, 107, 108, 109, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 500, 501, 502, 503, and 504.

(6) *Districts 20 and 21—Arapahoe county.* There shall be two senatorial districts within the county of Arapahoe which shall be numbered as follows and shall consist of the following whole general election precincts:

District 20: Precincts 21, 22, 23, 23A, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43,

44, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, and 89.

District 21: Precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, and 64.

(7) *District 22—Adams and Arapahoe counties.*—The counties of Adams and Arapahoe shall constitute the twenty-second senatorial district.

(8) *District 23—Weld county.* The county of Weld shall constitute the twenty-third senatorial district.

(9) *District 24—Boulder county.* The county of Boulder shall constitute the twenty-fourth senatorial district.

(10) *District 25—Boulder and Weld counties.* The counties of Boulder and Weld shall constitute the twenty-fifth senatorial district.

(11) *District 26—Larimer county.* The county of Larimer shall constitute the twenty-sixth senatorial district.

(12) *District 27—Mesa county.* The county of Mesa shall constitute the twenty-seventh senatorial district.

(13) *District 28.* The counties of Morgan, Logan, and Washington shall constitute the twenty-eighth senatorial district.

(14) *District 29.* The counties of Sedgwick, Phillips, Yuma, Kit Carson, Cheyenne, Kiowa, Crowley, Lincoln, and Elbert shall constitute the twenty-ninth senatorial district.

(15) *District 30.* The counties of Gilpin, Clear Creek, Douglas, Park, Teller, Chaffee, Fremont, Custer, and Saguache shall constitute the thirtieth senatorial district.

(16) *District 31.* The counties of Prowers, Bent, Baca, and Otero shall constitute the thirty-first senatorial district.

(17) *District 32.* The counties of Las Animas, Huerfano, Costilla, Alamosa, and Rio Grande shall constitute the thirty-second senatorial district.

(18) *District 33.* The counties of Conejos, Archuleta, Mineral, La Plata, San Juan, Dolores, and Montezuma shall constitute the thirty-third senatorial district.

(19) *District 34.* The counties of Gunnison, Hinsdale, Ouray, San Miguel, Montrose, and Delta shall constitute the thirty-fourth senatorial district.

(20) District 35. The counties of Moffat, Routt, Jackson, Grand, Summit, Eagle, Lake, Pitkin, Garfield, and Rio Blanco shall constitute the thirty-fifth senatorial district.

Section 3.—*Election of senators.*—(1) Senators from the following senatorial districts shall be elected at the general election held in November, 1964, and every four years thereafter: 2, 5, 6, 7, 8, 11, 12, 13, 14, 17, 18, 19, 20, 21, 22, 24, 25, and 35.

(2) Senators from the following senatorial districts shall be elected at the general election held in November, 1966, and every four years thereafter: 1, 3, 4, 9, 10, 15, 16, 23, 26, 27, 28, 29, 30, 31, 32, 33, and 34.

Section 4.—*Holdover senators keep office—vacancies.*—Nothing in this act shall be construed to cause the removal of any senator from his office for the term for which he was elected, but each such senator shall serve the term for which he was elected. In the event of a vacancy in the senate, such vacancy shall be filled as provided by law; provided, if any senator elected at the 1962 general election from a county which by this act contains two or more

senatorial districts, shall vacate his seat on or after the second Tuesday in January, 1965, and prior to the expiration of his term of office in January, 1967, such vacancy shall be filled from the county at large.

Section 5.—*Representative districts — number — composition.*—(1) *Districts 1-18—city and county of Denver.* —There shall be eighteen representative districts within the city and county of Denver which shall be numbered as follows and shall consist of the following whole general election precincts:

District 1: Precincts 101 through 130.
District 2: Precincts 201 through 222.
District 3: Precincts 301 through 324.
District 4: Precincts 401 through 418.
District 5: Precincts 501 through 520.
District 6: Precincts 601 through 624.
District 7: Precincts 701 through 725.
District 8: Precincts 801 through 825.
District 9: Precincts 901 through 923.
District 10: Precincts 1001 through 1035.
District 11: Precincts 1101 through 1129.
District 12: Precincts 1201 through 1232.
District 13: Precincts 1301 through 1327.
District 14: Precincts 1401 through 1426.
District 15: Precincts 1501 through 1525.
District 16: Precincts 1601 through 1626.
District 17: Precincts 1701 through 1727.
District 18: Precincts 1801 through 1826.

(2) *Districts 19-23—El Paso county.* There shall be five representative districts within the county of El Paso which shall be numbered as follows and shall consist of the following whole general election precincts:

District 19: Precincts 19, 20, 21, 22, 39, 40, 41, 42, 48, 49, 50, 51, 52, 53, 54, 69, 70, and 71.

District 20: Precincts 31, 32, 33, 37, 38, 56, 57, 58, 64, 65, 66, 67, 68, 86, 87, and 90.

District 21: Precincts 18, 23, 24, 25, 27, 28, 29, 30, 34, 35, 36, 59, 60, 61, 62, 63, 88, 89, 91, and 92.

District 22: Precincts 2, 3, 4, 5, 6, 7, 8, 16, 17, 26, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 93, 94, and 95.

District 23: Precincts 1, 9, 10, 11, 12, 13, 14, 15, 43, 44, 45, 46, 47, 55, 72, 73, and 74.

(3) *Districts 24-27—Jefferson county.* There shall be four representative districts within the county of Jefferson which shall be numbered as follows and shall consist of the following whole general election precincts:

District 24: Precincts 106, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 302, and 318.

District 25: Precincts 104, 110, 301, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 319, 402, 405, 406, 408, 410, 411, and 412.

District 26: Precincts 101, 102, 103, 105, 107, 108, 109, 401, 403, 404, 407, 409, 502, 503, 504, 507, 508, 509, 511, 513, 515, and 707.

District 27: Precincts 501, 505, 506, 510, 512, 514, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 701, 702, 703, 704, 705, 706, and 708.

(4) *Districts 28-31—Adams county.* There shall be four representative districts within the county of Adams which shall be numbered as follows and shall consist of the following whole general election precincts:

District 28: Precincts 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 211, 212, 213, 214, and 300.

District 29: Precincts 101, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 301, 302, 303, 304, 305, 306, 307, 308, 309, and 310.

District 30: Precincts 102, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, and 322.

District 31: Precincts 100, 103, 104, 105, 106, 107, 108, 109, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 500, 501, 502, 503, and 504.

(5) *Districts 32-35—Pueblo county.* There shall be four representative districts within the county of Pueblo which shall be numbered as follows and shall consist of the following whole general election precincts:

District 32: Precincts 1, 2, 3, 5, 9, 10, 11, 12, 13, 14, 41, 42, 43, 57, 58, 116, and 117.

District 33: 4, 6, 7, 8, 15, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 103, 105, and 107.

District 34: Precincts 39, 40, 44, 45, 46, 47, 54, 55, 56, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, and 75.

District 35: Precincts 34, 35, 37, 38, 48, 49, 50, 51, 52, 53, 70, 71, 72, 73, 74, 76, 106, 108, 109, 110, 111, and 112.

(6) *Districts 36-39—Arapahoe county.* There shall be four representative districts within the county of Arapahoe which shall be numbered as follows and shall consist of the following whole general election precincts:

District 36: Precincts 21, 22, 23, 23A, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, and 44.

District 37: Precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20.

District 38: Precincts 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, and 64.

District 39: Precincts 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, and 89.

(7) *Districts 40-42—Boulder county.* There shall be three representative districts within the county of Boulder which shall be numbered as follows and shall consist of the following whole general election precincts:

District 40: Precincts 1, 2, 3, 6, 17, 18, 19, 20, 22, 23, and 24 in the city of Boulder; and precincts 6, 7, 12, 17, 18, 19, 20, 21, and 22 in the county of Boulder.

District 41: Precincts 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 21, 25, and 26 in the city of Boulder; and precincts 8, 13, and 16 in the county of Boulder.

District 42: Precincts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 in the city of Longmont; and precincts 27 and 28 in the city of Boulder; and precincts 1, 2, 4, 5, 9, 10, 11, 14, and 15 in the county of Boulder.

(8) *Districts 43-45—Weld county.* There shall be three representative districts within the county of Weld which shall be numbered as follows and shall consist of the following whole general election precincts:

District 43: Precincts 1, 2, 3, 4, and 9 in ward one in the city of Greeley; precinct 1 in ward two in the city of Greeley; and precincts 2, 4, 9, 10, 11, 13, 17, 18, 19, 20, 21, 25, 30, 31, and 32 in the county of Weld.

District 44: Precincts 3, 4, and 5 in ward two in the city of Greeley; precincts 1, 2, 3, and 4 in ward three in the city of Greeley; and precincts 1, 5, 22, 23, 27, 28, 29, 33, and 34 in the county of Weld.

District 45: Precincts 5, 6, 7, and 8 in ward one in the city of Greeley; precincts 2 and 6 in ward two in the city of Greeley; and precincts 3, 6, 7, 8, 12, 14, 15, 16, 24, and 26 in the county of Weld.

(9) *Districts 46 and 47—Larimer county.* There shall be two representative districts within the county of Larimer which shall be numbered as follows and shall consist of the following whole general election precincts:

District 46: Precincts A1, B1, B2, B3, B4, C1, C2, C3, C4, C5, C6, C7, C8, C9, C10, D1, D2, D3, E1, E2, E3, E4, E5, E6, and 17.

District 47: Precincts 1, 2, 4, 5, 6, 7, 18, 19, 20, 21, 22, 22A, 23, 23A, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, 37, 38, 39, 40, 41, 44, 46, and 47.

(10) *Districts 48 and 49—Mesa county.* There shall be two representative districts within the county of Mesa which shall be numbered as follows and shall consist of the following whole general election precincts:

District 48: Precincts 1, 4, 5, 8, 12, 13, 15, 16, 19, 20, 26, 29, 30, 32, 36, 37, 38, 39, 40, 42, 44, 47, 49, 52, 53, 55, 56, 58, 59, 60, and 61.

District 49: Precincts 2, 3, 6, 7, 9, 10, 11, 14, 17, 18, 21, 22, 23, 24, 25, 27, 28, 31, 33, 34, 35, 41, 43, 45, 46, 48, 50, 51, 54, and 57.

(11) *District 50.* The counties of Bent, Prowers, and Baca shall constitute representative district 50.

(12) *District 51.* The county of Logan shall constitute representative district 51.

(13) *District 52.* The counties of Fremont and Custer shall constitute representative district 52.

(14) *District 53.* The counties of Otero and Crowley shall constitute representative district 53.

(15) *District 54.* The counties of Las Animas and Costilla shall constitute representative district 54.

(16) *District 55.* The county of Morgan shall constitute representative district 55.

(17) *District 56.* The counties of Yuma, Phillips, Sedgwick, and Washington shall constitute representative district 56.

(18) *District 57.* The counties of Delta, Gunnison, and Hinsdale shall constitute representative district 57.

(19) *District 58.* The counties of Park, Teller, Douglas, Chaffee, and Lake shall constitute representative district 58.

(20) *District 59.* The counties of La Plata and Montezuma shall constitute representative district 59.

(21) *District 60.* The counties of Garfield, Eagle, Pitkin, and Rio Blanco shall constitute representative district 60.

(22) *District 61.* The counties of Summit, Moffat, Routt, Jackson, Grand, Clear Creek, and Gilpin shall constitute representative district 61.

(23) *District 62.* The counties of Conejos, Rio Grande, Mineral, and Archuleta shall constitute representative district 62.

(24) *District 63.* The counties of Alamosa, Huerfano, and Saguache shall constitute representative district 63.

(25) *District 64.* The counties of Montrose, Ouray, San Miguel, Dolores, and San Juan shall constitute representative district 64.

(26) *District 65.* The counties of Lincoln, Kit Carson, Elbert, Cheyenne, and Kiowa shall constitute representative district 65.

Section 6.—*Districts to coincide with county line changes.*—(1) To the extent that boundaries of senatorial and representative districts established pursuant to this act coincide with county lines, such senatorial and repre-

sentative districts shall continue to coincide therewith in the event that such county lines are changed.

(2) In cases involving changes in county lines where newly acquired territory is contiguous to two or more senatorial districts, or to two or more representative districts, or both, within the county to which annexed, such annexed territory shall be included in that contiguous senatorial district or that representative district, or both, containing the lesser population as determined by the last preceding federal decennial census.

Section 7.—*Meaning and scope of terms—changes in precinct boundaries.*—(1) As used in this act, for the purpose only of describing senatorial and representative districts, the term "whole general election precincts" means those precincts existing on July 1, 1964, as fixed by the election commission of the city and county of Denver and the boards of county commissioners of all other counties containing two or more senatorial or representative districts.

(2) Changes in the precinct boundaries of a county shall be made only within the district boundaries of each senatorial and representative district as established by this act.

Section 8.—*Applicability of act.*—This act shall apply to the forty-fifth and subsequent general assemblies, except as provided in section 2 (3) of this act; and sections 63-1-1 through 63-1-7, Colorado Revised Statutes 1953, repealed by this act, shall remain in effect as they existed prior to such repeal and prior to amendment by chapter 143, Session Laws of Colorado 1963, for all purposes of the forty-fourth general assembly.

Section 9.—*Repeal.*—63-1-1 through 63-1-7, Colorado Revised Statutes 1953, and chapters 143 and 144, Session Laws of Colorado 1963, as amended, are hereby repealed.

Section 10.—*Safety clause.*—The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Robert L. Knous
PRESIDENT OF THE SENATE

John D. Vanderhoof
SPEAKER OF THE HOUSE OF REPRESENTATIVES

Mildred H. Cresswell
SECRETARY OF THE SENATE

Donald H. Henderson
CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES

APPROVED.....

John A. Love
GOVERNOR OF THE STATE OF COLORADO

and it is further ordered that the defendants shall conduct and are hereby ordered to conduct the primary and general elections for the said year 1964 for the election of the General Assembly of the State of Colorado in accordance with the provisions of the said Senate Bill and in the manner and in accordance with the apportionment and establishment of senatorial and representative districts therein made and above and foregoing.

2. That this Court will and does hereby retain jurisdiction of this action.

DONE AND SIGNED IN OPEN COURT THIS 13TH DAY OF JULY, 1964, as of July 8, 1964.

BY THE COURT:

.....

JEAN S. BREITENSTEIN, CIRCUIT JUDGE, ASSIGNED

.....

ALFRED A. ARRAJ, CHIEF JUDGE, UNITED STATES DISTRICT COURT

.....

WILLIAM E. DOYLE, JUDGE, UNITED STATES DISTRICT COURT

APPROVED AS TO FORM:

CHARLES GINSBERG and GEORGE LOUIS CREAMER

By /s/ Charles Ginsberg and George Louis Creamer
For the Plaintiffs.

/s/ Duke W. Dunbar

Duke Dunbar, as Attorney General of the State of Colorado, for the Defendants

/s/ Richard S. Kitchen, Sr.
/s/ James L. White
/s/ Stephen H. Hart

For the Intervenors.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

C. A. No. 7501

LUCAS, et al,
Plaintiffs,
v.
44th GENERAL ASSEMBLY, et al,
Defendants.

OFFICIAL TRANSCRIPT
Ruling

Proceedings before the HONORABLE JEAN S. BREITENSTEIN, Circuit Judge, United States Court of Appeals, Presiding, and the HONORABLE ALFRED A. ARRAJ, Chief Judge, United States District Court for the District of Colorado, and the HONORABLE WILLIAM E. DOYLE, Judge, United States District Court for the District of Colorado, beginning at 2:00 o'clock p.m., on the 26th day of June 1964, at Denver, Colorado.

APPEARANCES:

For the Plaintiffs:

GEORGE L. CREAMER, Attorney at Law, Equitable Building, Denver, Colorado.

CHARLES GINSBERG, Attorney at Law, Boston Building, Denver, Colorado.

FRANCIS R. SALAZAR, Attorney at Law, Denver U. S. National Center, Denver, Colorado.

For the Defendants:

DUKE W. DUNBAR, Attorney General, State of Colorado, Denver, Colorado.

ANTHONY F. ZARLENGO, Attorney at Law, Majestic Building, Denver, Colorado.

RICHARD W. BANGERT and JAMES C. WILSON, JR., Office of the Attorney General, State of Colorado, Denver, Colorado.

For the Intervenors:

RICHARD S. KITCHEN, First National Bank Building, Attorney at Law, Denver, Colorado.

CHARLES S. VIGIL, Attorney at Law, Symes Building, Denver, Colorado.

STEPHEN H. HART and JAMES L. WHITE, Attorneys at Law, Equitable Building, Denver, Colorado.

Amicus Curiae:

PHILIP J. CAROSELL, Attorney at Law, Majestic Building, Denver, Colorado.

RULING

JUDGE BREITENSTEIN: We deem it advisable to express our conclusions at this time in the matter presented.

Obviously, it is impossible for us to come down in anything in writing. As counsel have been advised, we, all three of us, have to be away next week.

Here is the way we figured it out. Judge Doyle and I feel that Amendment Number 7 is not severable. That is, as to the provisions on the Senate and the House.

Judge Arraj feels that the provisions of Number 7 relating to the Senate are severable from the provisions relating to the House. That is, as to the apportionment.

The effect of Judge Arraj's position, as I understand

it, is that the Senate should have 39 members, but that the method of apportionment, under the Supreme Court decision, must be rejected as invalid.

On the question of the present constitutional provisions, Judge Arraj and I feel that the effect of Section 47 of Article V is to not forbid the subdistricting of counties. Judge Doyle feels that it does.

We state our views in the hope that they may be of some assistance to the State officials in arriving at a solution of this troublesome problem.

The Supreme Court sent the case back to us for determination of whether the imminence of the '64 election requires the utilization of the apportionment scheme contained in the constitutional amendment, or whether some other method can be effectuated in 1964.

On the presentation of counsel, we feel that the amount of time which is available is sufficient for the State to take action which will effectuate the decision of the United States Supreme Court.

If the State does not do that and does not come up with a solution, the Court will, of course, carry out the duty which it has under the mandate of the United States Supreme Court and come up with some method for the election of the members of the legislature in 1964.

In order that the Court may be advised as to whether the State intends to take action, the Court will set the matter over to 9:30 a.m., July 15th. At that time, we would like to have counsel advise us as to whether State action will be taken or not.

If State action is taken, then we have the additional responsibility of determining whether that action is permissible under the 14th Amendment.

If it does not take action, then the burden is on us to

come up with some plan which will carry out as closely as may be the principles announced by the United States Supreme Court.

Now, does any counsel have any question about what I have said?

MR. CAROSELL: On the question of July 15th, does the Court hold that the State must by that time present to this Court a reapportionment of the legislature?

JUDGE BREITENSTEIN: No, sir, it does not mean that. It means by that time we wish to be advised as to whether proceedings are to be undertaken by the State to do this.

Of course, time is of great importance here. It may be that by July 15th the State can set into operation the machinery necessary to bring about a State enacted apportionment which will comply with what the Supreme Court has said must be done.

We recognize they might not be able to complete that, and if the State sets the machinery in operation, why, we certainly will give you time to complete it, but we can't give too much time because we all know of the imminence of the election.

MR. CREAMER: If it please the Court, it is then, we take it, permissible for the State to embark upon a procedure of apportionment as immediately as the State officials might think practicable before July 15th?

JUDGE BREITENSTEIN: Certainly. We feel that this is essentially a State problem. I believe all of us are in agreement that it is better for the State to solve the problem than for the Federal Court to do it. We recognize that.

At the same time, we recognize our duty and responsibility under the Supreme Court mandate, and if the State doesn't do it, then we have to do something.

Mr. Dunbar?

MR. DUNBAR: I want to be sure that it is clear because I have to report this to the Governor and some of the other State officials.

JUDGE BREITENSTEIN: Yes.

MR. DUNBAR: As I understand it, the entire Amendment 7 is invalid?

JUDGE BREITENSTEIN: That is the view of two members of the Court, Judge Arraj dissenting.

MR. DUNBAR: Yes. That means that we must proceed under the old or the present—if it is invalid, the former constitutional provisions relating to elections are still in effect.

JUDGE BREITENSTEIN: Yes, sir.

MR. DUNBAR: And that being the case, we proceed to reapportion, having in mind the meaning of ratio which we will determine according to the latest Supreme Court decision.

Now, I think by July 15th, we can certainly advise you what is intended to be done, if something hasn't already been done by that time.

JUDGE BREITENSTEIN: Mr. Zarlengo?

MR. ZARLENGO: Just one thing, and redistricting is permitted under Section 47 of the Constitution as it existed prior to Amendment 7?

JUDGE BREITENSTEIN: That is the view of two of us, Judge Doyle dissenting.

Of course, Mr. Zarlengo, just to clarify that, with that view of the majority of the Court, it will be possible for the legislature to adopt or accept the apportionment of the

House as it exists under House Bill 65 and to apportion the Senate on the basis of subdistricting of counties.

That's the view of the majority of the Court.

That would also mean that the Senate is composed of 35 members.

MR. ZARLENGO: Yes, I understand that, Your Honor, and thank you for the clarification.

JUDGE BREITENSTEIN: All right, Mr. Vigil?

MR. VIGIL: I was going to ask the same question.

THE COURT: All right, now does anybody else have any questions, because we want to make it as clear as we possibly can?

MR. CREAMER: Pardon me, I wonder if we might ask that the reporter be requested to transcribe in multiple copies the statement of the Court from the bench, because absent a written decision it will perhaps, assuming that something is to take place before the 15th, be publicly quite imperative that there be some kind of preserved record.

JUDGE BREITENSTEIN: Of course, any party that wants a copy of what has been said can get it by buying it from the reporter.

MR. CREAMER: I will be happy to commission the reporter to do so and do such in such form there be multiple copies available, and we will bear the cost of doing so.

THE COURT: Of course, I am sure all the lawyers here present realize that when you make an oral ruling such as has been made here, there is a possibility of a slip of the tongue and a possibility of a lack of clarity which is lessened at least when you have something in writing.

The reason we have done this the way that we have

orally is because of the pressure of time and the fact that we are leaving town in the morning and we thought that it would be of some advantage to have our views before we had to go.

MR. ZARLENGO: I think it will be a tremendous advantage to have that and we will order a copy and realizing the situation that Your Honor has stated, but it will give us some guidelines that will be of a tremendous amount of help.

MR. DUNBAR: May I express the thanks of the State officials of the Court's position and, of course, action in giving us something immediate now that we will know which way to go.

JUDGE BREITENSTEIN: Well, Mr. Dunbar, we hope the State can work further—

SPECTATOR: May a person—

JUDGE BREITENSTEIN: Are you of counsel in this case?

SPECTATOR: No, I am not. I won't ask a question.

JUDGE BREITENSTEIN: I think we should only hear from counsel.

MR. CREAMER: May the plaintiffs also express their thanks to the Court for its extreme expedition in this matter? It is one in which all of Court and counsel have been aware of the pressing nature of the problems and we do thank the Court for taking this unusual step in expediting it.

(Whereupon, the hearing was concluded.)

REPORTER'S CERTIFICATE

I, Donna G. Spencer, Certified Shorthand Reporter, do hereby certify that I was present at and reported in shorthand the proceedings in the foregoing matter; that I thereafter reduced by shorthand notes reflecting the ruling of the Court at the conclusion of the matter to typewritten form, comprising the foregoing Official Transcript; further, that the foregoing official transcript is a full, true and accurate record of the ruling of the Court in this matter on the date set forth.

Dated at Denver, Colorado, this 26th Day of June, 1964.

/s/ Donna G. Spencer
Donna G. Spencer
Certified Shorthand Reporter

APPENDIX C

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

C. A. No. 7501

LUCAS, et al,
Plaintiffs,

vs.

44th GENERAL ASSEMBLY, et al,
Defendants.

OFFICIAL TRANSCRIPT

Ruling

Proceedings before the HONORABLE JEAN S. BREITENSTEIN, Circuit Judge, United States Court of Appeals, Presiding, and the HONORABLE ALFRED A. ARRAJ, Chief Judge, United States District Court for the District of Colorado, and the HONORABLE WILLIAM E. DOYLE, Judge, United States District Court for the District of Colorado, beginning at 3:30 o'clock p.m., on the 8th day of July, 1964, at Denver, Colorado.

APPEARANCES:

For the Plaintiffs:

GEORGE L. CREAMER, Attorney at Law, Equitable Building, Denver, Colorado.

CHARLES GINSBERG, Attorney at Law, Boston Building, Denver, Colorado.

FRANCIS R. SALAZAR, Attorney at Law, Denver U. S. National Center, Denver, Colorado.

For the Defendants:

DUKE W. DUNBAR, Attorney General, State of Colorado, Denver, Colorado.

ANTHONY F. ZARLENGO, Attorney at Law, Majestic Building, Denver, Colorado.

RICHARD W. BANGERT and JAMES C. WILSON, JR., Office of the Attorney General, State of Colorado, Denver, Colorado.

For the Intervenors:

RICHARD S. KITCHEN, First National Bank Building, Attorney at Law, Denver, Colorado.

CHARLES S. VIGIL, Attorney at Law, Symes Building, Denver, Colorado.

STEPHEN H. HART and JAMES L. WHITE, Attorneys at Law, Equitable Building, Denver, Colorado.

Amicus Curiae:

PHILIP J. CAROSELL, Attorney at Law, Majestic Building, Denver, Colorado.

ALSO PRESENT: The HONORABLE JOHN LOVE, Governor of the State of Colorado.

RULING

JUDGE BREITENSTEIN: At the last hearing on this matter, the Court announced the ruling that on the question of the severability of Amendment Number 7 Judge Doyle and I felt that Amendment Number 7 was not severable and hence failed in toto. Judge Arraj dissented from that.

On the question of whether or not Section 47 of Article V of the Colorado Constitution prohibited subdistrict-

ing, Judge Arraj and I concluded that it did not, and Judge Doyle disagreed with that decision.

In the context of the decisions of the majority of the Court as they now appear, we have considered the positions of the parties as stated this afternoon.

We understand that the Colorado General Assembly has passed Senate Bill Number 1 and that the bill has been presented to the Governor for signature with at least the indication that the Governor intends to sign the bill.

The attorneys for the plaintiffs, the attorneys for the defendants and the attorneys for the intervenors all appear to be in agreement that for the purposes of the 1964 election the apportionment made by Senate Bill Number 1 comports with 14th Amendment requirements and the decision of the United States Supreme Court in the case of Lucas against the 44th General Assembly.

Mr. Carosell, whose appearance here is as an amicus curiae and not as an attorney representing any parties, differs somewhat so far as specific apportionments are concerned.

In the context of the case as it now stands which I have mentioned, on the basis of the statements of position made by counsel and on the basis of the Court's examination of the apportionment made by Senate Bill Number 1, it is the opinion of the Court that for the purposes of the 1964 election the apportionment made by Senate Bill Number 1 does not offend the 14th Amendment to the United States Constitution and is adequate to comply with the mandate of the United States Supreme Court.

Accordingly, an order will be entered requiring the defendants to conduct the 1964 elections in conformity with Senate Bill Number 1 and the Court will retain jurisdiction of the cause.

Judge Arraj, have you any comments on the statement which I have made?

JUDGE ARRAJ: No, I think you accurately and adequately covered it.

JUDGE BREITENSTEIN: Judge Doyle?

JUDGE DOYLE: Fairly stated my position.

JUDGE BREITENSTEIN: Very well, that will be the order of the Court. Now, since this order will at least in theory be an appealable order, we feel that a written judgment must be prepared and entered as promptly as can be, and we will expect the attorneys to collaborate in preparation of a written order and we would like to have that submitted not later than July 14th so that we can give it consideration on the 15th.

MR. SALAZAR: If it please the Court, may I ask a question of the Court pertaining to the order?

JUDGE BREITENSTEIN: Yes.

MR. SALAZAR: The Court has just ordered, as I understand it, that the election is to be in conformity with this bill. Now, there is, it is my understanding, an appeal before the Colorado Supreme Court concerning the subdistricting parts.

JUDGE BREITENSTEIN: Sir, we are entering our order.

MR. SALAZAR: I just wished to point out, if the Colorado Supreme Court—

JUDGE BREITENSTEIN: We will meet other problems when they arise. I have stated what the Court unanimously says will be its order. If other conditions arise which require our attention, we will meet them when, as and if they arise.

This is an order for the 1964 election with the Court retaining jurisdiction.

MR. SALAZAR: I understand that, Your Honor, but I was pointing out, and I am sure the Court is aware, if the Colorado Supreme Court should overrule the subdistricting part, there would be a conflict.

JUDGE BREITENSTEIN: We are not going to even discuss that further, Mr. Salazar.

MR. CREAMER: If it please the Court, as a procedural matter, may I suggest, without intending to be presumptuous but I think procedurally it is my obligation anyway, that I prepare a written order and circulate it to counsel to see if agreement can be obtained on it? I believe as the plaintiff that probably—

JUDGE BREITENSTEIN: Yes, I am afraid the labor is on you.

MR. CREAMER: If I may, I will undertake to do that, and request at this time that the reporter make a transcript of the bench ruling so that I may use that in that circumstance and I will undertake to have it circulated, at least with comment, by the 14th.

MR. GINSBERG: Your Honor—

JUDGE BREITENSTEIN: Pardon me, Mr. Ginsberg. I intended to state this before. If any counsel is uncertain as to the effect of the decision I have stated orally, I wish he would let me now know.

MR. GINSBERG: I am not uncertain, I just had one suggestion to make that might be agreeable.

JUDGE BREITENSTEIN: All right.

MR. GINSBERG: The Governor is here and the legislature is in session. It would seem to me it might be well if they would conclude their function in accordance with the order of Court, their express purpose. In other words, the bill might be enacted into law by the Governor signing and the legislature adjourned.

JUDGE BREITENSTEIN: We are not telling the Governor or General Assembly what to do.

MR. GINSBERG: You are not telling him not to do it.

JUDGE BREITENSTEIN: We are not telling him not to. We expressed the view last time this was a local problem, best solved locally. We wanted to intrude only if as a last resort we had to do it. That is still our attitude. We are not telling anybody what to do except that our order is that the 1964 election will be conducted in accordance with the appropriate legislation.

MR. GINSBERG: Nothing to interfere with the actions of the Governor or legislature.

JUDGE BREITENSTEIN: No, we are not interfering. We are not telling them what to do or not to do. Anything further? Governor?

GOVERNOR LOVE: If it please the Court, although not admitted of counsel in this case I would like to express the appreciation of myself personally and of I am sure the legislators and people of Colorado for your cooperation and prompt handling and willingness to devote your time to this problem.

JUDGE BREITENSTEIN: Well, we are glad the legislature solved it.

Anything further?

MR. CAROSELL: One small question, Your Honor.

JUDGE BREITENSTEIN: Mr. Carosell.

MR. CAROSELL: I understand that this order is to be ready by the 14th of July, am I correct?

JUDGE BREITENSTEIN: That's what we want, yes. We think we have got to bring this to a conclusion and the 15th is going to be the first day we can consider it.

MR. CAROSELL: I understand from the Governor himself he is going to sign the bill tonight.

JUDGE BREITENSTEIN: I don't know anything about that.

MR. CAROSELL: Will there be any conflict?

JUDGE BREITENSTEIN: I don't know anything about that. I am just saying what our order is and we expect the judgment to be submitted so we can consider it on July 15th.

MR. KITCHEN: As I understand, the setting you previously made for July 15th is still a setting of the Court?

JUDGE BREITENSTEIN: No, that is vacated but we have expedited that having this one today and we have gotten statements of counsel and we have taken the action so I see no reason for that unless we find some fault with the form of judgments presented. Maybe we will. You know, judges are a little individualistic at times.

MR. KITCHEN: There is no setting as such?

JUDGE BREITENSTEIN: There is no setting. If we wish to hear counsel again after we review the form of judgments submitted, we will advise counsel.

MR. CAROSELL: Judge, in view of the fact that you have retained jurisdiction, if anything arises that might interfere with the retention of jurisdiction of this Court, what do you instruct us to do?

JUDGE BREITENSTEIN: All I am going to say in answer to this is, I stated positively, not once but several times, that we are retaining jurisdiction and you can take whatever implications from that you wish.

The Court will be in recess.

(Whereupon, the hearing was concluded.)

REPORTER'S CERTIFICATE

I, Donna G. Spencer, Certified Shorthand Reporter, do hereby certify that I was present at and reported in shorthand the proceedings in the foregoing matter; that I thereafter reduced my shorthand notes reflecting the ruling of the Court at the conclusion of the matter to typewritten form, comprising the foregoing Official Transcript; further, that the foregoing Official Transcript is a full, true and accurate record of the ruling of the Court in this matter on the date set forth.

Dated at Denver, Colorado, this 8th day of July, 1964.

/s/ Donna G. Spencer
Donna G. Spencer
Certified Shorthand Reporter